

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DONALD DALESANDRO,)
Plaintiff,)
v.) Case No.: 16 Civ. 0602 (KPF)
RCAP HOLDINGS, LLC,)
Defendant,)
- and -)
RCS CAPITAL CORPORATION,)
Nominal Defendant.)

USDC SDNY
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DATE FILED: March 25, 2016

STIPULATION AND

**ORDER REGARDING STAY DURING
BANKRUPTCY**

WHEREAS Plaintiff Donald Dalesandro (“Plaintiff”) filed the Complaint (Dkt. No. 1) on January 26, 2016 pursuant to Section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b), as attorney in fact for Liberty Solution, an alleged owner of Class A common stock of Nominal Defendant RCS Capital Corporation (“RCAP”);

WHEREAS by his Complaint, Plaintiff seeks to recover alleged short-swing profits by Defendant RCAP Holdings, LLC (“Defendant”) in the securities of RCAP, which alleged liability Defendant denies;

WHEREAS RCAP filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on January 31, 2016, in the United States Bankruptcy Court for the District of Delaware, docketed as Case No. 16-10223;

WHEREAS the filing of this petition triggered an automatic stay of these proceedings as against RCAP (Dkt. No. 15);

WHEREAS Section 5.1(2) of the presently unconfirmed First Amended Joint Plan of Reorganization for RCS Capital Corporation and its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code (Dkt. No. 324 of Case No. 16-10223) (“Joint Plan”) provides that, on the effective date defined in the Joint Plan, prepetition interests in RCAP “shall be cancelled, discharged, and of no further force or effect and any right of any holder of [such interest] in respect thereof, including any Claim related thereto, shall be deemed cancelled, discharged and of no force or effect”;

WHEREAS Defendant contends that Plaintiff and Liberty Solution will not have standing to pursue this litigation after the effective date defined in the Joint Plan (without conceding that they currently have standing);

WHEREAS Plaintiff contends that he has and will continue to have standing to pursue this litigation after the effective date defined in the Joint Plan;

NOW THEREFORE Plaintiff and Defendant stipulate and agree as follows:

1. This case shall be stayed until 60 days after the effective date defined in the Joint Plan (or any successor to or replacement of the Joint Plan).
2. RCAP Holdings, LLC’s deadline for filing and serving an answer or a motion under Rule 12 shall be continued to 60 days after the effective date defined in the Joint Plan (or any successor to or replacement of the Joint Plan).
3. The initial pretrial conference scheduled for April 14, 2016 (Dkt. No. 5) shall be continued to a date to be determined by the Court.

March 24, 2016

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This case is STAYED until further order of the Court. The Clerk of Court is directed to place the matter on the suspense calendar. The parties are further ORDERED to submit a joint letter addressing the status of the bankruptcy proceedings every 120 days, and to advise the Court promptly after the bankruptcy stay is lifted. Finally, the initial pretrial conference currently scheduled for April 14, 2016, is hereby ADJOURNED *sine die*.

Dated: March 25, 2016
New York, New York

SO ORDERED.

Katherine Polk Failla

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE